



## CONTRACT MANAGEMENT CHECKLIST

### CORE PROVISIONS TO INCLUDE

What does your contract require of subcontractors? Be specific. Ask yourself these questions while drafting your contract. Then spell out your requirements, making sure you include the following core provisions.

#### Does your written contract require subcontractors to:

- Defend and indemnify you for a liability arising out of their work or negligence?** (Tip: Include attorney fees and litigation costs.)

An indemnification provision (aka a hold harmless provision) typically involves a conscious risk assumption by one party, and a risk transfer by the other party.

With an indemnity agreement, the indemnitor agrees to pay the indemnitee if the latter suffers a loss. These clauses are widely used in construction contracts to control distribution of losses and to clearly identify who must pay.

- Endorse you as an additional insured on their general liability policy?**

The policy should use ISO's CG 20 10 and CG 20 37, or equivalent, providing coverage for both ongoing and completed operations.

- Carry the following coverage parts and minimum limits of liability?**

- » General liability: \$1M
- » Umbrella: \$1M (\$5M is suggested best practice)
- » Commercial auto: \$1M
- » Employer's liability: \$500K (\$1M is suggested best practice)
- » Workers' compensation statutory limits
  - For each coverage part, higher limits may be warranted, depending on the job.
  - Ask whether the coverage is being offered on an *occurrence* or *claims-made* basis or as part of a *self-insured-retention (SIR)* program. It could make a difference.

- Carry the coverages listed above *prior* to project inception?**

- Provide additional insured coverage to you on a primary and non-contributory basis on their general liability policy?**

- » A primary insurance clause can ensure that the additional insured policy will be primary to the contractor's own insurance policy. Typically, the party providing the general liability insurance should have its insurer endorse its policy accordingly.
- » A non-contributory clause ensures that such additional insured policy will contribute and not seek contribution from the contractor's own insurance policy.

- Obtain a waiver of subrogation endorsement on their policies?**

A waiver of subrogation prevents the insurer from attempting to seek damages from a third party who causes loss to the insured. With general liability, property, workers' compensation and employer's liability, the right of subrogation may be waived prior to the occurrence or accident. This could be a significant form of protection.

### OTHER PROVISIONS TO CONSIDER

Have your attorney determine whether the core and additional provisions listed below conform with public policy in the jurisdiction where your work will take place. Find out whether the provision can and/or should be included in your agreements.

#### Does your written contract require subcontractors to:

- Provide the additional insured with completed operations coverage for the duration of the statute of repose in the subcontractor's predominant state of operations, or 10 years?**
- Provide additional insured coverage on a primary and non-contributory basis on their umbrella policy?**
  - » This will add an additional layer of protection to the umbrella policy, just as a similar provision enhances the general liability policy.
- Provide you with at least 30 days written notice prior to policy cancellation?**

All insurance contracts contain cancellation provisions. While it's often difficult to keep track of other policies, make sure the information provided to you is accurate and current.